IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6182 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMBHUSINGH AMARSINGH BHATI THRO' WIFE REETA KANWAR BHATI

Versus

STATE OF GUJARAT

Appearance:

MR BP GUPTA for Petitioner

MR AJ DESAI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 9th July 1999 passed by the Police Commissioner, Ahmedabad City detaining the detenu under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 as a dangerous person

within the meaning of Section 2(c) of the Act. The detenu is detained at Jamnagar Jail.

2. The grounds enclosed with the detention order dated 9th July 1999 show that three criminal cases under Chapter 16 and 17 of the IPC were registered against the detenu on 5.11.1995 at Adalaj Police Station, 25th November 1995 at Mehsana City Police Station and on 29th June 1999 at Sabarmati Police Station. Besides it two witnesses have deposed against the detenu with regard to the incidents dated 5.6.1999 and 10.6.1999. On the basis of the statements of these two witnesses and the criminal cases, the detaining authority has found the detenu to be a dangerous person and while referring to his anti social and violent activities of threatening the persons taking them to be the police informers and involved in cheating and beating them with deadly weapons etc. he has found him to be a dangerous person. The detaining authority has also invoked the provisions of Section 9(2) of the Act for the purpose of non-disclosure of the identity of the witnesses. It has also been observed that at the time of passing the order of detention, the detenu was in judicial custody and therefore, in case he is released on bail, he may continue his anti social activities and therefore, it was necessary to detain him. On behalf of the respondents, an affidavit-in-reply dated 2nd March 2000 to the petition has been filed.

3. There are more than one ground on which the detention is sought to be assailed. One of the grounds taken up on behalf of the detenu as set out in para 8 of the petition is that the grounds of detention are in Gujarati language, the detenu had studied upto VI Std. in Hindi medium and he does not know to read or write Gujarati language. It has also been stated that the order and the grounds of detention were never read over to the detenu and the detenu is not able to read Gujarati language and he is not able to make an effective representation and therefore, the detenu is deprived of his rights enshrined under Article 22(5) of the Constitution of India for making an effective representation at the earliest point of time. With regard to these averments, it is stated in the reply dated 2nd March 2000 on behalf of the respondents that as per the endorsement made below the order of detention, the detenu has said that he had studied upto VI Std. and he is staying in Ahmedabad since last ten years and he can speak and understand Gujarati language. Therefore, his contention was not tenable. In this view of the matter, I called upon the learned Asstt. Govt. Pleader to produce the order on which the endorsement was made by

the detenu. I find from the endorsement that the detenu has signed in Hindi. The contents of the endorsement are recorded by some police officer in Gujarati language. Merely because the detenu has signed on this document in Hindi on which the aforesaid endorsement is written in Gujarati, it cannot be said that the detenu is the author of the contents of the endorsement or that on the basis of these contents it could be taken that the detenu knows Gujarati. While replying the the detenu's averments made in para 8, that he has studied upto VI Std. in Hindi medium, the same has not been controverted and it is not the case of the respondents that the detenu had studied upto VI Std. in Gujarati medium. If the detenu has studied upto VI Std. in Hindi medium only, it cannot be said that he knows Gujarati merely because he has been living in Ahmedabad. It is, therefore, clear that the grounds of detention and the documents enclosed therewith which run in 147 pages are all of in Gujarati and that is not the language known or understood by the detenu. The mere factum of his signing in Hindi below the endorsement recorded by a police officer in Gujarati does not imply that the detenu knows Gujarati. It is, therefore, clear that the supply of these documents in a language which is not known or understood by the detenu has affected his right of making an effective representation. Today only the law in this regard has been considered by this Court in detail while deciding Special Civil Application No.8136 of 1999. This Court, therefore, finds that this petition deserves to be allowed on this ground alone and therefore, it is not necessary for me to go into the other grounds on which the detention order has been assailed.

4. In the result, the detention order cannot be sustained in the eye of law and the impugned detention order dated 9th July 1999 passed by the Police Commissioner, Ahmedabad City is quashed and set aside. It is directed that the detenu Shambhusingh Amarsingh Bhati detained in Jamnagar Jail be released forthwith if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is hereby allowed. Rule is made absolute.

(M.R. Calla, J.)

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